

June 27, 2019

via ECFS and e-mail

Marlene H. Dortch
Secretary, Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

**Re: Children’s Television Programming Rules • MB Docket No. 18-202
Modernization of Media Regulation Initiative • MB Docket No. 17-105
Closed Captioning of Video Programming • CG Docket No. 05-231
Telecommunications for the Deaf and Hard of Hearing, Inc. Petition for
Rulemaking • PRM11CG**

Dear Ms. Dortch,

The below-signed Consumer Groups—representing Americans who are deaf, hard of hearing, blind, visually impaired, or DeafBlind—and accessibility technology researchers write to express our concern about specific provisions in the Commission’s draft item, scheduled to be voted on at the July 2019 Open Meeting, to change the children’s television rules (“*Children’s Video ReO*”).¹

While we do not express a perspective on the full slate of issues raised in the *ReO* and accompanying Further Notice of Proposed Rulemaking, we are concerned about the Commission’s revisions allowing short-form children’s programming² and changing the rules on airing children’s programming on multicast streams,³ both of which raise the prospect of harming the access of children who are deaf, hard of hearing, blind, visually impaired, or DeafBlind to captioned and described children’s programming. Protecting the civil rights of all Americans, including children, to access video programming on equal terms is a cornerstone of the Commission’s responsibilities under the video accessibility provisions of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA)⁴

¹ *Children’s Television Programming Rules, Draft Report and Order and Further Proposed Notice of Proposed Rulemaking*, MB Docket Nos. 18-202 and 17-105 (June 19, 2019) (“*Children’s Video ReO*”), <https://docs.fcc.gov/public/attachments/DOC-358070A1.pdf>.

² *Id.* at ¶¶ 29-34.

³ *Id.* at ¶¶ 44-46.

⁴ P.L. 111-260 § 202(a) (codified at Section 713(f) of the Communications Act of 1934 (47 U.S.C. § 613(f))) (requiring the reinstatement of the Commission’s video description rules).

and amendments to the Communications Act of 1934 in the Telecommunications Act of 1996.⁵ We urge the Commission to tread carefully by committing to revisiting its conclusions in the *ReO* and ensuring that its new rules do not harm children with disabilities.

Short-Form Programming. First, the *ReO* would permit broadcast stations “to air up to 52 hours annually of Core Programming that is not regularly scheduled on a weekly basis, including educational specials and regularly scheduled non-weekly programs, and short-form programs, including PSAs and interstitials.”⁶ As the Commission explicitly acknowledges, the record developed in advance of the *ReO* raises significant concerns that some of this newly-permitted short-form programming might not be described because of budgetary constraints.⁷ The Commission also explains that short-form programming might not be captioned because it may be eligible for various categorical exemptions to the Commission’s captioning rules.⁸

We appreciate the Commission’s commitments that the possible reduction in video-described programming will not impact that total number of hours that must be video-described⁹ and that only short-form children’s programming meeting the specific terms of applicable caption exemptions will not be required to be captioned.¹⁰ Nevertheless, opening the prospect of a whole new category of inaccessible children’s programming is a deeply concerning choice, and encouraging voluntary accessibility efforts is not enough to vindicate the rights of children with disabilities.

Accordingly, we urge the Commission to commit to seeking detailed information from broadcasters and compiling a report, no more than two years from the effective date of the *ReO*, detailing the extent to which short-form content has proliferated and the extent to which it is accessible to children with disabilities through the provision of captions and description. We likewise urge the Commission to commit to revisiting its changes in the *ReO* if the report reflects that children with disabilities are being denied accessible programming as a result of a proliferation of short-form programming.

⁵ P.L. 104-104 § 305 (codified at Section 713(a)-(e), (g)-(h) (47 U.S.C. § 613(a)-(e), (g)-(h))) (requiring the adoption of closed captioning rules).

⁶ *Id.* at 29.

⁷ *See id.* at ¶ 34.

⁸ *See id.* at ¶ 34 & n.134 (citing 47 C.F.R. §§ 79.1(d)(6) (exempting interstitials, promotional announcements, and public service announcements 10 minutes or less in duration) & (d)(8) (exempting locally-produced and distributed non-news programming with no repeat value)).

⁹ *See id.* at ¶ 34.

¹⁰ *See id.* at ¶ 34 & n.134

Multicast Programming. Second, the *ReO* permits broadcasters to air as much as one-third of their programming on multicast streams.¹¹ Again, the Commission explicitly acknowledges that the record developed in advance of the *ReO* raises significant concerns about the extent to which this change “could impact the availability of educational and informational programming that is accessible to children with visual or hearing disabilities.”¹² Children’s programming that might have been shown on a station’s primary stream with audio descriptions may now be shifted to a multicast stream where the station cannot count it toward its audio description obligations.¹³ Likewise, children’s programming that might have been shown on a station’s primary stream with captions may now be shifted to a multicast stream that is exempt from the Commission’s captioning regulations.¹⁴

It is not clear to us from the record or the *ReO* precisely how much aggregate content is likely to shift from primary to multicast streams, nor how much of the content that is likely to shift will be missing captions and/or description. However, the Commission’s conclusory contention that there “will still be a plentiful supply of educational and informational programming that is accessible to children with visual or hearing disabilities”¹⁵ does little to disabuse the possibility that opening the door to multicast programming will result in a significant proliferation of content that is delivered uncaptioned and/or undescribed because it is not subject to the rules. Moreover, the contention reflects a fundamentally discriminatory view that children with disabilities need only have access to some sufficiently “plentiful” quantum of programming, rather than a commitment to the long-standing goal of *equal* access to video programming enshrined in the CVAA and the Communications Act.

Accordingly, we urge the Commission to commit to seeking detailed information from broadcasters and adding to the aforementioned report the extent to which children’s programming has shifted from primary to multicast streams, and the extent to which multicast programming is accessible to children with disabilities through the provision of captions and description. We likewise urge the Commission to commit to revisiting its

¹¹ *Id.* at ¶ 44.

¹² *Id.* at ¶ 46 & n.182.

¹³ *See id.* (citing 47 C.F.R. § 79.3(b)(1)).

¹⁴ *See id.* (citing 47 C.F.R. § 79.1(d)(12)). While multicast streams are not *per se* exempt from the Commission’s captioning provision rules, the Commission’s 2014 *Caption Quality Order* determined that each multicast stream would be separately counted for eligibility for the \$3 million annual revenue exemption in Rule 79.1(d)(12), CG Docket No. 05-231, 29 FCC Rcd. 2221, 2283-85, ¶ 107-08, effectively rendering most multicast streams exempt from the rules.

¹⁵ *See id.*

changes in the *R&O* if the report reflects that children with disabilities are being denied accessible programming as a result of the proliferation of multicast programming.

Categorical Caption Exemptions. We remind the Commission that the aforementioned issues with the availability of captioned short-form and multicast children’s programming stem from the long-standing and unjust maintenance of categorical closed caption exemptions, including the \$3 million annual revenue,¹⁶ short-form,¹⁷ and locally-produced non-news no-repeat value¹⁸ exemptions that many of the Consumer Groups have repeatedly urged the Commission to revisit and abolish or dramatically narrow. Many of the concerns are articulated in the Groups’ 2011 *Universal Captioning Petition*,¹⁹ on which the Commission sought comment in 2014²⁰ and which remains pending today. We urge the Commission to be mindful of the impact the changes in the *R&O* may have on the categorical exemptions and to renew its commitment to revisiting the now-more-than-two-decades-old categorical exemptions and the flawed economic assumptions that led the Commission to adopt them in the first instance.

DeafBlind Accessibility. Finally, we note that the *R&O* does not acknowledge the significant accessibility shortcomings of children’s programming for children who are DeafBlind, does not consider the extent to which the *R&O*’s proposed changes will impact children who are DeafBlind, or propose any future action to vindicate the civil rights of children who are DeafBlind. We urge the Commission to formally acknowledge these issues and commit to future action to ensure that children’s video programming is accessible on equal terms to children who are DeafBlind.

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We thank the Commission for its continued attention to these critical issues. Please don’t hesitate to contact us if you have any questions.

¹⁶ 47 C.F.R. § 79.1(d)(12).

¹⁷ 47 C.F.R. § 79.1(d)(6).

¹⁸ 47 C.F.R. § 79.1(d)(8).

¹⁹ *See generally* Petition for Rulemaking of TDI, et al. PRMCG11, CG Docket No. 05-231 (Feb. 1, 2011), <https://www.fcc.gov/ecfs/filing/6016167106>.

²⁰ *Caption Quality Order*, 29 FCC Rcd. 2221, 2308, § 159; *see also* Comments of TDI, et al. at 14-18 (July 9, 2014) (offering detailed critiques of the categorical exemptions), <https://www.fcc.gov/ecfs/filing/6017879330>; Reply Comments of TDI, et al. at 10-15 (Aug. 7, 2014) (same), <https://www.fcc.gov/ecfs/filing/6018254533>.

Respectfully submitted,

/s/

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